IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1862 of 1995

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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URMILABEN WIFE OF GHANSHYAM BHAI HARGOVINDDAS PATEL. - Applicant(s)

Versus

RASILABEN W/O PRAVINCHANDRA VITHALDAS - Opponent(s)

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Appearance :
MR VC DESAI for Petitioner
MR KETAN A DAVE for Respondent
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 24/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 18th July, 1995 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 94 of 1994, the appellant-plaintiff in Regular Civil Suit No. 70 of 1982 has preferred the present Revision Application under

Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondent-defendant is a tenant in part of the suit house situated at Bhavnagar for a monthly rent of Rs. 40/=. On 18th July, 1980, the petitioner-plaintiff purchased the suit house from its *erstwhile* owner. The defendant was given notice of attornment by the vendor. The plaintiff gave intimation of his purchase of the suit house to the defendant on 3rd December, 1980. *Nevertheless*, the defendant did not pay rent to the plaintiff. By Notice dated 13th November, 1981, the plaintiff called upon the defendant to pay the arrears of rent and gave notice of termination of tenancy. The plaintiff instituted Civil Suit No. 70 of 1982 in the Court of learned Civil Judge [JD], Bhavnagar for recovery of possession of the suit premises, *inter alia*, on the ground that the defendant was a tenant in default and that he was not ready and willing to pay the rent. On receipt of the notice of demand on 19th November, 1981, on 16th December, 1981, the defendant filed Civil Misc. Application No. 187 of 1981 in the Court learned Civil Judge [JD], Bhavnagar for determination of the standard

rent of the suit premises and deposited a sum of Rs. 760/=, the amount of arrears of rent, in the Court. The defendant claimed that the standard rent of the suit premises was Rs. 35/= and not Rs. 40/= as claimed by the plaintiff. The suit was contested by the defendant vide written statement Exh.16. In the written statement, the defendant raised dispute as to the standard rent and declared that he had moved Civil Misc. Application No. 187 of 1981 and had deposited a sum of Rs.760/= in the said proceeding.

The Civil Suit No. 70 of 1982 instituted by the plaintiff and the Civil Misc. Application No. 187 of 1981 preferred by the defendant were consolidated. The learned Civil Judge, by the common judgment and order dated 30th September, 1994, dismissed the Suit instituted by the plaintiff and allowed the Civil Misc. Application. The learned Civil Judge held that the standard rent of the suit premises was Rs. 35/= per month, as alleged by the defendant. As to the recovery of possession, the learned Civil Judge held that the defendant had raised dispute as to the standard rent of the suit premises within one month from the date of the receipt of the notice of demand. The defendant was, therefore, entitled to

protection against eviction as envisaged by Section 12 [3](b) of the Rent Act.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 94 of 1994 in the Court of learned District Judge, Bhavnagar. The learned Assistant Judge dismissed the Appeal by his judgment and order dated 18th July, 1995. Therefore, the present *Revision Application.*

Mr. Desai has assailed the judgment of the lower appellate Court. He has submitted that Section 12 [1] of the Rent Act confers protection upon the tenant against eviction so long as the tenant pays or is ready and willing to pay the standard rent and permitted increases, if any. Thus, the tenant owes an obligation to pay rent or to show his readiness to pay the rent. To show the readiness and willingness to pay the rent, the tenant is required to pay/tender the amount of agreed rent. However, Section 12[1] read with explanation thereto provides that in a case where a tenant after the receipt of the notice of demand within one month therefrom makes an application to the Court under sub-section 3 of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made

by the Court, the tenant shall be deemed to be ready and willing to pay the rent. In the present case, *indisputably*, after the receipt of the notice of demand as envisaged by Section 12 [2] of the Rent Act, the defendant did raise dispute as to the standard rent by making application under Section 11 [3] of the Rent Act within one month. On the date of the application, he also deposited the amount of arrears of rent. He, however, neglected to pay the rent thereafter. In the submission of Mr. Desai, as the defendant had raised dispute as to the standard rent of the suit premises within one month from the date of the receipt of the notice of demand, the defendant was indeed entitled to protection against eviction as envisaged by Section 12 [3](b) of the Rent Act i.e. the defendant was obliged to pay or deposit the amount of rent then due on the first day of hearing of the suit and thereafter to continue to pay or tender in the Court, the rent regularly till the suit was finally decided and also pending the Appeal before the lower appellate court. *Admittedly*, the defendant did not make any payment or deposit pending the suit or pending the Appeal. The defendant had thus forfeited right to protection against eviction conferred by Section 12 [3] (b) of the Rent Act. Mr. Desai has submitted that the

lower appellate Court and the trial Court have proceeded on the premise that once the defendant had deposited the amount of rent due, he owed no obligation to pay the rent thereafter, pending the Suit and the Appeal. He has submitted that the lower appellate court has overlooked the statutory provision in dismissing the suit instituted by the plaintiff. In support thereof, he has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of **Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff** (Dead) **by his Legal Representatives** [*AIR 1968 SC 1109*].

The Revision Application is contested by Mr. Dave. He has submitted that the defendant had raised dispute as to the standard rent of the suit premises. Until any order was made on the application made by the defendant under Section 11 [3] of the Rent Act, he was not required to pay or deposit the rent. He has further submitted that since the decision in Appeal, the defendant has paid the amount of arrears of rent and has deposited the rent due and payable till 31st July, 2005. The defendant is, therefore, entitled to protection against eviction.

I am unable to agree with Mr. Dave. It is the first

and foremost requirement that a tenant should pay rent regularly. So long the tenant continues to pay the rent or is ready and willing to pay the standard rent and permitted increases, no decree for eviction shall pass against him. In case of a tenant in default to show his *bona fide*, the tenant shall pay the amount of rent due within one month from the date of the receipt of the notice of demand given under Section 12 (2) of the Rent Act. However, in a case where the tenant raises dispute as to the standard rent by making application under Section 11 [3] of the Rent Act within one month from the date of the receipt of the notice and continues to pay the rent as directed by the Court, he should be deemed to be ready and willing to pay the rent. But what if the tenant after making application under Section 11 [3] of the Rent Act fails to obtain order of the Court or the Court does not make any order on such application ? Should, in absence of such order, the tenant be absolved from paying any rent ? In my view, the scheme of the Rent Act, particularly Sections 11 & 12 of the Rent Act, does not permit such recalcitrant attitude on the part of the tenant. It is the duty of the tenant to obtain order of *interim* standard rent from the Court. The Rent Act does not envisage tenant to avoid his liability to pay rent

merely by making application under Section 11 [3] of the Rent Act. It also expects the tenant to obtain order from the Court for payment of rent pending the suit. If a tenant fails to obtain such order from the Court, he shall pay the rent as provided in Section 12 [3](b)of the Rent Act. Section 12 [3](b) of the Rent Act confers upon a tenant in default protection against eviction and also imposes a duty upon such tenant viz., [i] on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant shall pay or tender in Court the standard rent and permitted increases then due; [ii] thereafter, the tenant shall continue to pay or tender in Court such rent and permitted increases till the suit is finally decided; and [iii] shall pay the cost of the suit.

In the present case, *admittedly*, after making application under Section 11 [3] of the Rent Act, the defendant failed to obtain order from the Court and did not pay or deposit the monthly rent. As discussed hereinabove to avail of the protection conferred by Section 12 [3](b) of the Rent Act, the defendant was required to comply with the above referred conditions mentioned in Section 12 [3](b) of the Rent Act. It is

well settled that the date on which the trial Court frames the issue is treated as the first day of hearing of the suit. In the present case, the trial Court framed issues on 20th October, 1982. The defendant was, therefore, required to pay or deposit the rent due and payable till 20th October, 1982 on that day and to continue to pay the rent thereafter regularly. *Admittedly*, the defendant did not comply with any of the aforesaid three conditions. It should, therefore, be held that the defendant was not ready and willing to pay the rent.

If the defendant were given some benefit for the standard rent of the suit premises was not decided by the trial Court until the date of the decree; if the defendant were absolved from liability to pay the rent till the application for standard rent was decided, the defendant was required to pay arrears of rent within specified period after the decision of the trial Court. In the present case, as the trial Court did not specify any period the amount of arrears of rent ought to have been paid within reasonable time. *Admittedly*, the defendant did not pay the arrears of rent within reasonable time from the date of decision of the trial Court nor did he pay the rent pending the Appeal. *Thus*,

the defendant neglected to pay the rent pending the Suit and also pending the Appeal before the lower appellate court. The defendant, thus, forfeited right of protection conferred under Section 12 [3](b) of the Rent Act. In my view, the lower appellate court has failed to consider the relevant provisions of the Rent Act and the conduct of the defendant. The defendant having failed to pay the rent, pending the Suit and the Appeal, the plaintiff was entitled to a decree for eviction.

No other contention is raised before me.

For the aforesaid reasons, the Revision Application is allowed with cost. The *impugned* judgment and order dated 18th July, 1995 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 94 of 1994 is *quashed* and set-aside. Regular Civil Suit No. 70 of 1982 instituted by the respondent-plaintiff for recovery of possession of the suit premises is allowed. The plaintiff do recover vacant possession of the suit premises. The defendant do hand over the vacant and peaceful possession of the suit premises. A decree for recovery of possession of the suit premises be passed in favour of the plaintiff. Rule is made absolute.

Learned advocate Mr. Dave states that the defendant has passed away pending this Revision Application. His heirs and legal representatives have been substituted. He states that the daughters of the deceased defendant are married and are settled in their matrimonial home. One of the sons - one Shri Upendrabhai also has a separate residence. The widow and one other son Shri Ajaybhai, the respondent nos. 1/1 and 1/2 are residing in the suit premises. He requests that the said respondents be granted sometime to vacate and hand over the possession of the suit premises to the petitioners.

The decree for eviction passed against the defendant shall not be executed against his heirs and legal representatives till **31st March, 2006** on condition that each of the legal representatives of the deceased defendant shall, *within three weeks from today*, give an undertaking to this Court in the usual terms. They shall declare the names of the persons residing in the suit premises. Copy of each undertaking shall be given to the learned advocate Mr. Desai. It is further directed that in the event the respondents fail to hand over vacant and peaceful possession of the suit premises to the

petitioners by 31st March, 2006, commencing from **1st April, 2006**, such of the respondents who are in occupation of the suit premises shall be liable to pay occupancy fee of Rs. 500/= per month to the petitioners. Such occupancy fee shall be paid by 10th day of the next succeeding month till the petitioners recover possession of the suit premises.

{Miss R.M Doshit, J.}

*Prakash**